IN THE HIGH COURT OF JUDICATUARE FOR RAJASTHAN AT

JODHPUR.

ORDER.

Pradeep Sablok & ors.	vs.	The State of Raj. & ors.

S.B.Civil Writ Petition No.4661/2001 under
Article 226 of the Constitution of India.

Date of Order: May 16, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. V.D. Kalla, for the petitioners.
Mr. L.R. Upadhyay, for the respondents.

BY THE COURT

The present writ petition is against the order of the Government dated 27th-29th July, 1996 by which the Government put a restriction against making any change in the revenue record and also passed the order not to open mutation for the land of khasara no. 632.

The petitioners' case is that petitioners no.1 to 4 are the khatedar tenants of the land in dispute as they became the khatedar tenants in the land in dispute under the provisions of sub-section (1) of Section 6 of

the Rajasthan Land Reforms and Acquisition of Land Owners Estates Act, 1963 (for short 'the Act of 1963'). According to the petitioners, on earlier occasion, the Government issued a notice under Section 9-A of the Act of 1963 for taking possession of the land in dispute, upon which the petitioners preferred writ petitions nos. 1880/1975 and 1881/1975. Those writ petitions were allowed by this Court on 4.1.1985. Against the decision of this Court dated 4.1.1985, D.B.Civil Special Appeals Nos.289/1985 and 291/1985 were preferred. The appeals were dismissed by the Division Bench of this Court on 2.9.1986. The petitioners are claiming their khatedari rights (khasara nos.632/3 and khasara no.632/11) and which were the subject matter in the earlier writ petitions filed by the petitioners. In view of the judgments delivered in the above referred writ petitions and the D.B.Civil Special Appeals, the petitioners no.1 to 4 have been declared to be khatedar tenants of the land in question.

The petitioners no.1 to 4 sold their land to respondents no.5 to 9 and thereafter presented their papers before the Tehsildar, Jodhpur for making necessary entries in the revenue record in consequence of the purchase of the land by these purchasers but the revenue authorities are not entering the names of the purchasers as khatedar tenants in the revenue record simply because the Government had issued the

impugned order dated 27th-29th July, 1996.

According to the learned counsel for the petitioners, the revenue authorities have no jurisdiction to sit over the matter and the order passed by the Government is wholly without jurisdiction because the mutation is a judicial proceeding and for that purpose, even supervisory power vests with the Board of Revenue as provided under Section 23 of the Rajasthan Land Revenue Act.

The respondents submitted reply to the writ petition and have not disputed the previous litigations and the orders passed by this Court in favour of the petitioners. However, the respondents are relying upon few judgments of this Court and the action taken thereafter relating to other land belonging to the erstwhile ruler and alleged to have been transferred to other persons. Therefore, according to the respondents, in view of the disputes relating to the claim of other persons, since the writ petitions are pending before this Court, therefore, the stay order has been passed by the Government so that entries in revenue record may not be changed. It is also submitted that no mutation can be opened when there is a gift, sale or transfer of the agricultural land, not by registered deed, therefore, the petitioners cannot claim for opening mutation in their names.

I considered the submissions of the learned counsel for the parties. Since the facts are not in dispute and the matter is relating to the only mutation and since this Court has already decided the controversy by the judgment delivered in S.B.Civil Writ Petition Nos. 1880/1975 and 1881/1975 dated 4.1.1985 and by the Division Bench judgment of this Court in D.B.Civil Special Appeal Nos. 289/1985 and 291/1986 dated 2.9.1986 and in view of the fact that it is not the case of the respondent that the judgment of this Court referred above have been set aside by the Hon'ble Supreme Court, therefore, there remains no controversy so far as the rights of the petitioners are concerned.

It will be further relevant to mention here that in fiscal proceeding like mutation, the scope of enquiry is limited one and, therefore, when there is alienation of the property by the Khatedar tenants then necessary entries are required to be made by the revenue authorities and, therefore, there appears to be no reason for not entering the names of the petitioners as khatedar tenants for the land of khasara nos.632/3 and 632/11 on the basis of transfer deeds which have been executed in their favour.

Apart from above, the respondents could not point out any source of power by which the Government could have stayed the mutation

proceeding, therefore also, the order dated 27th-29th July, 1996 deserves to be quashed.

In addition to above, the Government cannot keep a matter pending for such a long period when admittedly there is no litigation pending with respect to the land in dispute (khasara nos. 632/3 and 632/11) because of pendency of litigation for other land.

In view of the above, the writ petition of the petitioners is allowed and the order of the State Government dated 27th-29th July, 1996 (Annx.3) is quashed and set aside so far as it relates to the land of the petitioners is concerned. The respondents are directed to pass appropriate order on the application of the petitioners for mutation of land in their favour.

(PRAKASH TATIA),J.

mlt.